



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219 and Appendix I to Chapter 2

[Docket DARS-2016-0033]

RIN 0750-AJ05

Defense Federal Acquisition Regulation Supplement: Amendment to Mentor-Protégé Program (DFARS Case 2016-D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that provides amendments to the DoD Pilot Mentor-Protégé Program.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571-372-6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 81 FR 65610 on September 23, 2016, to propose revisions to the DFARS

to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114-92). Section 861 provides several amendments to the DoD Pilot Mentor-Protégé Program ("the Program"), including new reporting requirements for mentor firms to provide information to DoD's Office of Small Business Programs to support decisions regarding continuation of particular mentor-protégé agreements. In addition, section 861 adds new eligibility criteria; adds limitations on a protégé firm's participation in the Program; adds new elements to mentor-protégé agreements; extends the Program for three years to September 30, 2021; and amends requirements for business development assistance provided by a mentor firm and for reimbursement of fees assessed by the mentor firm.

II. Discussion and Analysis

One respondent submitted a public comment in response to the proposed rule. DoD reviewed the public comment in the development of the final rule.

A. Summary of Significant Changes from the Proposed Rule

There are no changes made to the final rule as a result of the public comment; however, one conforming change is made.

B. Analysis of Public Comments

Comment: The respondent requested that DoD revise the Program's eligibility criteria for protégé firms to include Historically Black Colleges and Universities (HBCUs) and

Minority Institutions (MIs). Allowing HBCUs and MIs to participate in the Program as protégés would provide the opportunity for teaming arrangements with DoD prime contractors, as well as good research opportunities.

Response: The eligibility criteria are based on the statutory authority for the Program (10 U.S.C. 2302 note), which provides that a "disadvantaged small business concern" meeting certain criteria may participate as a protégé in the Program. The statutory definition of "disadvantaged small business concern" does not include HBCUs or MIs. Therefore, the statute does not support the inclusion of HBCUs and MIs as protégés. However, HBCUs and MIs have a role in the Program as providers of assistance to protégé firms.

C. Other changes from the Proposed Rule

A conforming change is made to the definition of "nontraditional defense contractor" in Appendix I, Paragraph I-101.2, to reflect the definition for this term that was established in the final rule "Procurement of Commercial Items (DFARS Case 2016-D006)" (see 83 FR 4431, dated January 31, 2018). Several Appendix I references are revised to reflect that, as of February 1, 2018, the Office of Small Business Programs is now organizationally located within DoD under Acquisition and Sustainment (A&S) in lieu of Acquisition Technology and Logistics (AT&L).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This final rule does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, which provides amendments to the DoD Pilot Mentor-Protégé Program ("the Program"). Specifically, section 861 provides new reporting requirements for mentor firms that will provide information to DoD's Office of Small Business Programs to support decisions regarding continuation of particular mentor-protégé agreements. In addition, section 861 adds new eligibility criteria; adds limitations on a protégé firm's participation in the Program; adds new elements to mentor-protégé agreements; extends the Program for three additional years; and amends requirements for business development assistance provided by a mentor firm and for reimbursement of fees assessed by the mentor firm. The objectives of this rule are to implement statutory amendments to the Program and to provide DoD's Office of Small Business Programs with information to support decisions regarding continuation of particular mentor-protégé agreements.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The rule will apply to small entities that participate in the Program. There are currently 85 small entities participating in the Program as protégé firms and six small entities participating as mentors.

The rule imposes new reporting requirements on mentor firms, including mentors who are small businesses, regarding assistance they have provided to their protégé firms and the success this assistance has had. Although protégé firms are not required to submit these reports, the mentor firms will need to obtain supporting information from the protégé firms in order to ascertain the success of the assistance provided.

DoD has not identified any alternatives that are consistent with the stated objectives of the applicable statute.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 0704-0332, titled: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I.

List of Subjects in 48 CFR Part 219 and Appendix I to Chapter 2

Government procurement.

Jennifer L. Hawes,

Regulatory Control Officer

Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 and appendix I to chapter 2 are amended as follows:

1. The authority citation for 48 CFR part 219 and appendix I to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.7100 [Amended]

2. Amend section 219.7100 by—

a. Removing “Section 831” and adding “section 831” in its place; and

b. Adding the phrase “, as amended through November 25, 2015” to the end of the first sentence.

3. Amend section 219.7102 by—

a. Revising paragraph (a);

b. Removing paragraph (b); and

c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

d. In the newly redesignated paragraph (c)(2), removing “Subpart” and adding “subpart” in its place.

The revision reads as follows:

219.7102 General.

* * * * *

(a) Mentor firms and protégé firms that meet the criteria in Appendix I, section I-102.

* * * * *

219.7103-2 [Amended]

4. Amend section 219.7103-2, in paragraph (e)(3), by removing "219.7102(d)(1)(ii)" and adding "219.7102(c)(1)(ii)" in its place.

219.7104 [Amended]

5. Amend section 219.7104 by—

a. In paragraph (b)—

i. Removing "Advance agreements are encouraged.";

ii. Removing "before October 1, 2018" and adding "not later than September 30, 2021" in its place; and

b. In paragraph (d), removing "before October 1, 2018" and adding "not later than September 30, 2021" in its place.

6. Amend Appendix I to Chapter 2 as follows:

a. In section I-100, revise paragraph (a).

b. Remove section I-101.1.

c. Redesignate section I-101.2 as section I-101.1.

d. Add new section I-101.2.

e. Revise section I-101.4.

f. Remove section I-101.5.

- g. Redesignate section I-101.6 as section I-101.5.
- h. In the newly redesignated section I-101.5, remove "Section" and add "section" in its place.
- i. Remove section I-101.7.
- j. Redesignate section I-101.8 as section I-101.6.
- k. In the redesignated section I-101.6, remove "Section" and add "section" in its place.
- l. In section I-102, revise paragraphs (a) through (d).
- m. Amend section I-103 by—
 - i. In paragraph (a), removing "September 30, 2015" and adding "September 30, 2018" in its place; and
 - ii. In paragraph (b), removing "September 30, 2018" and adding "September 30, 2021" in its place;
- n. Amend section I-104 by—
 - i. Revising paragraph (a);
 - ii. In paragraph (c), removing "as defined in I-101.5";
 - iii. In paragraph (d), removing "I-107(f)" and adding "I-106(d)" in its place; and
 - iv. Revising paragraph (e).
- o. Amend section I-105 by—
 - i. Revising paragraph (b)(1);
 - ii. In paragraphs (b)(2) through (b)(6), removing "company's" and "company" and adding "entity's" and "entity", respectively in each place they appear;

- iii. Revising paragraph (b)(7); and
- iv. Revising paragraph (c);
- p. Amend section I-106 by—
 - i. In paragraph (d)(1)(i), removing “business development, ”;
 - ii. In paragraph (d)(1)(iii), adding “described in I-107(g)” to the end of the sentence;
 - iii. In paragraph (d)(2), removing “Award of subcontracts” and adding “Award of subcontracts to the protégé firm” in its place;
 - iv. Removing paragraph (d)(6); and
 - v. Redesignating paragraph (d)(7) as (d)(6);
 - vi. In the newly redesignated paragraph (d)(6)(i), removing “Section” and adding “section” in its place.
- q. Amend section I-107 by—
 - i. In the introductory text, removing “will contain the following elements:” and adding “shall contain—” in its place;
 - ii. Revising paragraph (b);
 - iii. In paragraph (d), removing “I-102” and adding “I-102(a)” in its place; and
 - iv. Revising paragraphs (e), (f), and (g).
- r. Amend section I-109 by—
 - i. Redesignating paragraph (e) as paragraph (f); and
 - ii. Adding new paragraph (e).
- s. Amend section I-110.1, in paragraph (a), by removing “DoD Comprehensive Subcontracting Plan Test Program” and adding “DoD

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans" in its place; and removing "entity employing the severely disabled" and adding "entity employing severely disabled individuals" in its place.

t. Amend section I-110.2, in paragraphs (a) introductory text, (b) introductory text, and (c) by removing "OUSD(AT&L)" and adding "OUSD(A&S)" in each place.

u. Amend section I-112.1 by—

i. In the section heading, removing "SF 294s" and adding "Standard Forms 294" in its place; and

ii. In paragraph (b), removing "SDB" and adding "applicable" in its place; and removing "I-101.3 or I-101.5" and adding "I-102(b)" in its place.

v. Revise section I-112.2.

The revisions and additions read as follows:

APPENDIX I TO CHAPTER 2—POLICY AND PROCEDURES FOR THE DOD PILOT MENTOR PROTÉGÉ PROGRAM

I-100 Purpose.

(a) This Appendix I to 48 CFR chapter 2 implements the Pilot Mentor-Protégé Program (hereafter referred to as the "Program") established under section 831 of Public Law 101-510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note), as amended through November 25, 2015. The purpose of the Program is to provide incentives to major DoD contractors to

furnish eligible small business concerns with assistance designed to—

(1) Enhance the capabilities of eligible small business concerns to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts; and

(2) Increase the participation of such business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts.

* * * * *

I-101.2 Nontraditional defense contractor.

An entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement (10 U.S.C. 2302(9)).

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I-101.4 Severely disabled individual.

An individual who is blind or severely disabled as defined in 41 U.S.C. 8501.

* * * * *

I-102 Participant eligibility.

(a) To be eligible to participate as a mentor, an entity must—

(1) Be eligible for the award of Federal contracts;

(2) Demonstrate that it—

- (i) Is qualified to provide assistance that will contribute to the purpose of the Program;
- (ii) Is of good financial health and character; and
- (iii) Is not on a Federal list of debarred or suspended contractors; and

(3) Be capable of imparting value to a protégé firm because of experience gained as a DoD contractor or through knowledge of general business operations and Government contracting, as demonstrated by evidence that such entity—

- (i) Received DoD contracts and subcontracts equal to or greater than \$100 million during the previous fiscal year;

- (ii) Is an other-than-small business, unless a waiver to the small business exception has been obtained from the Director, Small Business Programs (SBP), OUSD(A&S);

- (iii) Is a prime contractor to DoD with an active subcontracting plan; or

- (iv) Has graduated from the 8(a) Business Development Program and provides documentation of its ability to serve as a mentor.

(b) To be eligible to participate as a protégé, an entity must be—

- (1) A small business concern;
- (2) Eligible for the award of Federal contracts;

(3) Less than half the Small Business Administration (SBA) size standard for its primary North American Industry Classification System (NAICS) code;

(4) Not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm; and

(5) At least one of the following:

(i) A qualified HUBZone small business concern.

(ii) A women-owned small business concern.

(iii) A service-disabled veteran-owned small business concern.

(iv) An entity owned and controlled by an Indian tribe.

(v) An entity owned and controlled by a Native Hawaiian organization.

(vi) An entity owned and controlled by socially and economically disadvantaged individuals.

(vii) A qualified organization employing severely disabled individuals.

(viii) A nontraditional defense contractor.

(ix) An entity that currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key DoD needs.

(c) Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (b) of this section, except that a mentor firm is required to confirm a protégé's status as a HUBZone small business concern (see FAR 19.703(d)).

(d) If at any time the SBA (or DoD in the case of entities employing severely disabled individuals) determines that a protégé is ineligible, assistance that the mentor firm furnishes to the protégé after the date of the determination may not be considered assistance furnished under the Program.

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I-104 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms that qualify under I-102(b). Mentor firms are encouraged to identify and select concerns that have not previously received significant prime contract awards from DoD or any other Federal agency.

* * * * *

(e) A protégé firm may not be a party to more than one DoD mentor-protégé agreement at a time, and may only participate in the Program during the 5-year period beginning on the date the protégé firm enters into its first mentor-protégé agreement.

I-105 Mentor approval process.

* * * * *

(b) * * *

(1) A statement that the entity meets the requirements in I-102(a), specifying the criteria in I-102(a)(3) under which the entity is applying.

* * * * *

(7) The total dollar amount and percentage of subcontracts that the entity awarded to firms qualifying under I-102(b)(5)(ii) through (viii) during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the entity was required to submit a Summary Subcontract Report (SSR) in the Electronic Subcontracting Reporting System, the request must include copies of the final reports for the 2 preceding fiscal years.

* * * * *

(c) A template of the mentor application is available at:
<http://www.acq.osd.mil/osbp/sb/programs/mpp/resources.shtml>.

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I-107 Elements of a mentor-protégé agreement.

* * * * *

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protégé firm does not exceed the size standard in I-102(b)(3);

* * * * *

(e) Assurances that—

(1) The mentor firm does not share, directly or indirectly, with the protégé firm ownership or management of the protégé firm;

(2) The mentor firm does not have an agreement, at the time the mentor firm enters into a mentor-protégé agreement, to merge with the protégé firm;

(3) The owners and managers of the mentor firm are not the parent, child, spouse, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin of an owner or manager of the protégé firm;

(4) The mentor firm has not, during the 2-year period before entering into a mentor-protégé agreement, employed any officer, director, principal stock holder, managing member, or key employee of the protégé firm;

(5) The mentor firm has not engaged in a joint venture with the protégé firm during the 2-year period before entering into a mentor-protégé agreement, unless such joint venture was approved by SBA prior to making any offer on a contract;

(6) The mentor firm is not, directly or indirectly, the primary party providing contracts to the protégé firm, as measured by the dollar value of the contracts; and

(7) The SBA has not made a determination of affiliation or control;

(f) A preliminary assessment of the developmental needs of the protégé firm;

(g) A developmental program for the protégé firm including—

(1) The type of assistance the mentor will provide to the protégé and how that assistance will—

(i) Increase the protégé's ability to participate in DoD, Federal, and/or commercial contracts and subcontracts; and

(ii) Increase small business subcontracting opportunities in industry categories where eligible protégés or other small business firms are not dominant in the company's vendor base;

(2) Factors to assess the protégé firm's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(3) A description of the quantitative and qualitative benefits to DoD from the agreement, if applicable; and

(4) Goals for additional awards for which the protégé firm can compete outside the Program;

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I-109 Reimburseable agreements.

* * * * *

(e) DoD may not reimburse any fee to the mentor firm for services provided to the protégé firm pursuant to I-106(d)(6) or for business development expenses incurred by the mentor firm under

a contract awarded to the mentor firm while participating in a joint venture with the protégé firm.

* * * * *

I-112.2 Program specific reporting requirements.

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually for the periods ending March 31st and September 30th throughout the Program participation term of the agreement. The September 30th report must address the entire fiscal year.

(1) Reports are due 30 days after the close of each reporting period.

(2) Each report must include the following data on performance under the mentor-protégé agreement:

(i) Dollars obligated (for reimbursable agreements).

(ii) Expenditures.

(iii) Dollars credited, if any, toward applicable subcontracting goals as a result of developmental assistance provided to the protégé and a copy of the ISR or SF 294 and/or SSR for each contract where developmental assistance was credited.

(iv) Any new awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under DoD contracts or other contracts, including the value of such subcontracts.

(v) All technical or management assistance provided by mentor firm personnel for the purposes described in I-106(d).

(vi) Any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under DoD contracts or other contracts, including the value of such subcontracts.

(vii) The amount of any payment of progress payments or advance payments made to the protégé firm for performance under any subcontract made under the Program.

(viii) Any loans made by the mentor firm to the protégé firm.

(ix) All Federal contracts awarded to the mentor firm and the protégé firm as a joint venture, designating whether the award was a restricted competition or a full and open competition.

(x) Any assistance obtained by the mentor firm for the protégé firm from the entities listed at I-106(d)(6).

(xi) Whether there have been any changes to the terms of the mentor-protégé agreement.

(xii) A narrative describing the following:

(A) The success assistance provided under I-106(d) has had in addressing the developmental needs of the protégé firm.

(B) The impact on DoD contracts.

(C) Any problems encountered.

(D) Any milestones achieved in the protégé firm's developmental program.

(E) Impact of the agreement in terms of capabilities enhanced, certifications received, and technology transferred.

(3) In accordance with section 861, paragraph (b) (2), of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), the reporting requirements specified in paragraphs (a) (2) (iv) through (a) (2) (xii) (C) of this section apply retroactively to mentor-protégé agreements that were in effect on November 25, 2015. Mentors must submit reports as described in paragraph (a) of this section.

(4) A recommended reporting format and guidance for its submission are available at:

<http://www.acq.osd.mil/osbp/sb/programs/mpp/resources.shtml>.

(b) The protégé must provide data, annually by October 31st, on the progress made during the prior fiscal year by the protégé in employment, revenues, and participation in DoD contracts during—

(1) Each fiscal year of the Program participation term; and

(2) Each of the 2 fiscal years following the expiration of the Program participation term.

(c) The protégé report required by paragraph (b) of this section may be provided as part of the mentor report for the period ending September 30th required by paragraph (a) of this section.

(d) Progress reports must be submitted—

(1) For credit agreements, to the cognizant Component Director, SBP, that approved the agreement, and the mentor's cognizant DCMA administrative contracting officer; and

(2) For reimbursable agreements, to the cognizant Component Director, SBP, the contracting officer, the DCMA administrative contracting officer, and the program manager.

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